

**R E M A R K S**

**Status of the Claims**

Claims 1-9 are pending in this application. No claims have been canceled. Claims 5-9 have been added. Support for the new claims is found in the specification at page 5, last paragraph and page 4, first paragraph. No new matter has been added by the above claim amendments and new claims.

**Objection to the Specification**

The Examiner objects to the specification because the parent application 10/005,122 is not indicated as now issued patent U.S. Patent 6,645,533. Applicants amend the first paragraph of the specification to indicate that Application No. 10/005,122 is now U.S. Patent 6,645,533. As such, this objection should be withdrawn.

**Rejections under 35 USC 112, second paragraph**

The Examiner rejects claims 1-4 as indefinite for failing to particularly and distinctly recite the subject matter of the claimed invention. The Examiner requires clarification on the mode of administration of the mixture of herbs. The Examiner also requires clarification on the "active ingredient". The Examiner

also states that there is no antecedent basis for "the adenosine triphosphate synthesis activator" in claim 4.

Applicants amend the claims to particularly and distinctly recite the subject matter of the claimed invention. Applicants correct the above issues raised by the Examiner. As such, these rejections should be withdrawn.

Rejections under 35 USC 102(b)

The Examiner rejects claims 1 and 3 as anticipated (inherency) by Giampapa USP 5,895,652 (Giampapa '652). The Examiner points to column 10, lines 56-57 of Giampapa '652 for disclosing administration of grape seeds to a patient. The Examiner contends that if grape seeds are administered to a patient, then ATP will be synthesized even if this is not the stated objective of administering the grape seeds because the grape seeds function to maximize the body's inherent biochemical pathways. The Examiner points to column 4, lines 35-45. Applicants traverse the rejection and respectfully request the withdrawal thereof.

Applicants overcome this rejection by amending the claims to delete grape seeds from the Markush group. Applicants submit that Giampapa '652 fails to disclose all of the elements of the present invention. Particularly, Giampapa '652 fails to disclose a mixture of herbs having an ion-exchange capacity from thyme, rosemary, turmeric, fennel, dandelion and *Acanthopanax senticosus* as recited

in the presently claimed invention. As such, this rejection should be withdrawn.

Rejection under 35 USC 103(a)

The Examiner rejects claims 2 and 4 as obvious over Giampapa '652. The Examiner states that Giampapa '652 discloses the administration of 20 mg per kg of body weight. The Examiner states that one of ordinary skill in the art would be motivated to optimize the dosage to 17.5 mg. Applicants traverse the rejection and respectfully request the withdrawal thereof.

Applicants submit that Giampapa '652 fails to disclose or suggest all of the elements of the present invention; thus no *prima facie* case of obviousness has been established. Giampapa '652 fails to disclose or suggest a mixture of herbs having an ion-exchange capacity from thyme, rosemary, turmeric, fennel, dandelion and *Acanthopanax senticosus* as recited in the presently claimed invention. At best, Giampapa '652 discloses administering grape seed to a patient. Giampapa '652 is silent on selecting herbs having an ion exchange capacity. Moreover, Giampapa '652 fails to suggest selecting these particular herbs from thyme, rosemary, turmeric, fennel, dandelion and *Acanthopanax senticosus*. As such, Applicants submit that no *prima facie* case of obviousness has been established as to the disclosure of Giampapa '652 over the present invention. Thus, this rejection should be withdrawn.

Conclusion

As Applicants have addressed and overcome all rejections in the Office Action, Applicants respectfully request that the rejections be withdrawn and that the claims be allowed.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Kecia Reynolds (Reg. No. 47,021) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By Raymond J.C. Stewart #21,026  
for Gerald M. Murphy, Jr., #28,977

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000

GMM/KJR:bmp  
1254-0232P

Attachment(s) :